

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

-----X
G.S.,

Index No. E2019-1988

Plaintiff,

Plaintiff designates
SULLIVAN COUNTY as the
place of trial

The basis of venue is
Defendant's Place of
Business

- against -

FROST VALLEY YMCA, FROST VALLEY
ASSOCIATION, INC., and YMCA OF
THE USA,

Defendants.

-----X
Summons

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Verified Answer on the undersigned attorneys, Hach Rose Schirripa & Cheverie LLP, representing Plaintiff, within twenty (20) days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York).

Please take notice that this action is based on a tort cause of action, that plaintiff seeks money damages for personal injuries and that incase of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Defendants' addresses:

FROST VALLEY YMCA, 2000 Frost Valley Road, Claryville, NY 12725 – **Serve through Secretary of State**

FROST VALLEY ASSOCIATION, INC. – **Serve through Secretary of State**

YMCA of the USA - 101 N Wacker Drive, Chicago, IL 60606

Dated: New York, New York
September 24, 2019

Respectfully Submitted,

HACH ROSE SCHIRIPPA & CHEVERIE, LLP


MICHAEL ROSE, ESQ.
HILLARY M. NAPPI, ESQ.
112 Madison Avenue, 10th Floor
New York, New York 10016
212-213-8311

Attorneys for Plaintiff G.S.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

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G.S.

Index No. E2019-1988

Plaintiff,

- against -

VERIFIED COMPLAINT

FROST VALLEY YMCA, FROST VALLEY
ASSOCIATION, INC. and YMCA OF
THE USA,

Defendants.
-----X

Plaintiff G.S. by her attorneys Hach Rose Schirripa & Cheverie LLP, complaining of the respective Defendants, respectfully alleges, upon information and belief and states as follows:

NATURE OF THE ACTION

1. This is a revival action brought pursuant to the New York Child Victims Act (the "CVA"), CPLR § 214-g. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, each of Plaintiff's claims were time barred the day she turned 22 years old.

2. In July of 1980, when she was 12 years old, Plaintiff attended camp at the defendant Frost Valley YMCA, located at 2000 Frost Valley Road, Claryville, NY 12725, this included overnight camping trips at a nearby horse-riding camp.

3. In July of 1980, while on an overnight camping trip, under the care, supervision, and control of the defendant Frost Valley YMCA's camp staff, Plaintiff, a minor, was sexually assaulted by a counselor employed by the horse-riding camp. Said horse-riding camp was owned, managed, maintained, and/or controlled by defendant Frost Valley YMCA and/or defendant YMCA of the USA and/or defendant Frost Valley Association, Inc. when aforementioned

counselor committed his heinous acts. Plaintiff's life was forever changed in one devastating moment.

4. As a result of the passage of the CVA, Plaintiff can now pursue restorative justice. Plaintiff brings suit to vindicate her rights.

PARTIES

5. Plaintiff G.S. ("Plaintiff") is an individual residing in Morris County, New Jersey.

6. Defendant Frost Valley YMCA was and is a foreign corporation authorized to do business under and by virtue of the laws of the State of New York.

7. Defendant Frost Valley Association, Inc. was and is a domestic non-profit corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant YMCA of the USA is the national resource office for all of the YMCA's local chapters in the United States.

9. At all times relevant, and to the present day, defendant Frost Valley YMCA operates its camp at 2000 Frost Valley Road, Claryville, NY.

10. Defendant Frost Valley YMCA, Defendant YMCA of the USA, and Defendant Frost Valley Association, Inc., as well as the aforementioned horse-riding camp are all affiliated with each other and are all part of the same non-profit corporation commonly known as "the YMCA."

11. Defendant Frost Valley YMCA, Defendant YMCA of the USA, and Defendant Frost Valley Association, Inc. are collectively sometimes hereinafter referred to as "Defendants" or "Defendants YMCA."

12. Defendants YMCA's self-stated goal is to "strengthen communities through youth development, healthy living and social responsibility."

13. The aforementioned counselor (hereinafter "John Doe", said name being fictitious and used to represent the unknown abuser) is not a party to this action. However, John Doe is an individual who committed the acts described herein which give rise to Plaintiff's allegations.

14. At all times relevant hereto John Doe was employed as a counselor at the aforementioned horse-riding camp that is part of the same non-profit corporation commonly known as "the YMCA".

15. At all times relevant hereto John Doe was an agent of Defendants YMCA.

JURISDICTION AND VENUE

16. This Court has personal jurisdiction over the claims asserted herein pursuant to C.P.L.R. §§ 301 and 302, in that the one or more Defendants transact business within the State of New York.

17. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

18. Venue for this action is proper in the County of Sullivan pursuant to C.P.L.R. § 503 in that Defendant Frost Valley YMCA maintains a principal place of business in this County.

FACTS COMMON TO ALL CAUSES OF ACTION

19. During the summer of 1980 when Plaintiff was twelve (12) years old, Plaintiff attended the Defendant's camp known as Frost Valley YMCA, located at 2000 Frost Valley Road, Claryville, NY 12725. She had previously attended the camp in the summers of 1978 and 1979.

20. Occasionally, the camp would take the campers on an overnight camping trip on the grounds of a nearby horse-riding camp that was also a YMCA camp. Tents were set up for sleeping with, typically, ten campers per tent.

21. Upon information and belief, on these overnight camping trips, Plaintiff and other campers were accompanied by employees from Defendant Frost Valley who were present to supervise and monitor the minors in their care.

22. Upon information and belief, the tents the children were sleeping in were relatively unguarded.

23. In the July of 1980, while Plaintiff was asleep in her tent on one such overnight camping trip on the grounds of the nearby horse-riding camp, both she and another female tent-mate were dragged from their tent by a male counselor, John Doe, that they recognized as being one of the employees that worked with the horses.

24. The two girls were then sexually assaulted by John Doe, who penetrated them vaginally with his penis.

25. Afterward, Plaintiff was scared, confused and bleeding vaginally.

26. The two victims reported the sexual assault to their cabin counselor, who alerted the "head of the camp."

27. Upon information and belief, the "cabin counselor" did not alert law enforcement officials to report Plaintiff's sexual assault.

28. Said "head of the camp" made John Doe apologize to both girls before firing him the next day.

29. Upon information and belief, the "head of the camp" never contacted the proper law enforcement officials to report Plaintiff's sexual assault.

30. At all times described herein, Plaintiff did not, and could not legally, consent to engage in sexual activity with John Doe.

31. At all times described herein, John Doe's acts violated the New York State Penal Code.

32. Upon information and belief, David R. Mercer, now former Chief Executive Officer at YMCA of the USA conducted an investigation of the above referenced sexual assaults.

33. That David R. Mercer, now former Chief Executive Officer at YMCA of the USA, had numerous communications with Plaintiff's father regarding the above referenced sexual assaults.

34. Upon information and belief, law enforcement officials were never notified by any member of the Defendants' organization after their internal "investigation."

35. As a direct result of the Defendants' employee John Doe' conduct described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **NEGLIGENT HIRING/SUPERVISION/RETENTION/DIRECTION**

36. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "35" as if fully set forth herein.

37. Defendants negligently hired and/or retained its employee John Doe, with knowledge of John Doe's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

38. Defendants negligently placed its employee, John Doe, in a position to cause foreseeable harm, which most probably would not have occurred had the employer taken reasonable care in the hiring of employees.

39. Defendants negligently hired and/or retained its employee, John Doe, negligently placed its employee, John Doe, in a position to cause foreseeable harm, which Plaintiff would not have been subjected to, had Defendants taken reasonable care in supervising or retaining the employee, John Doe.

40. Defendants knew or should have known of its employee John Doe's propensity for the conduct that caused Plaintiff's injuries.

41. Defendants negligently failed to properly train and/or supervise its employee John Doe.

42. That as a result of the foregoing Plaintiff was seriously and permanently injured.

43. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Defendants in the ownership, operation, management, maintenance, control, security and supervision of its employees.

44. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of the Defendants and/or their agents, servants, employees, without any negligence on the part of the Plaintiff contributing thereto.

45. By reason of the foregoing, the respective Defendants are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**SECOND CAUSE OF ACTION
INADEQUATE SECURITY**

46. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "35" as if fully set forth herein.

47. That Defendants negligently failed to provide adequate security to Plaintiff while Plaintiff was lawfully within the premises.

48. That Defendants negligently failed to provide adequate security to Plaintiff while Plaintiff was lawfully within the premises and while Defendant had knowledge of its employee John Doe' propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

49. That Defendants negligently failed to safeguard Plaintiff G.S., a child.

50. That Defendants knew or should have known of its employee John Doe' propensity for the conduct that caused Plaintiff's injuries and negligently failed to take reasonable measures to protect and provide security to the Plaintiff.

51. That as a result of the foregoing Plaintiff was seriously and permanently injured.

52. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Defendants in the ownership, operation, management, maintenance, control, security and supervision of the Premises and employees within the premises.

53. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of the Defendants without any negligence on the part of the Plaintiff contributing thereto.

54. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**THIRD CAUSE OF ACTION
BREACH OF DUTY IN LOCO PARENTIS**

55. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "35" as if fully set forth herein.

56. While Plaintiff was a minor, Plaintiff was entrusted by her parents to the control and supervision of Defendants' and their employees, including John Doe. During the times that Plaintiff was entrusted to Defendants and their employees, John Doe was under the supervision and control of Defendants. The respective Defendants owe – and owed – a duty to children entrusted to them to act in loco parentis and to prevent foreseeable injuries.

57. At all times material hereto, the respective Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

58. As a direct result of the respective Defendants breach of duty, Plaintiff has suffered the injuries and damages described herein.

59. By reason of the foregoing, the respective Defendants are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**FOURTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

60. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "35" as if fully set forth herein.

61. While Plaintiff was a minor, Plaintiff was entrusted by his/her parents to the control and supervision of Defendants and their employees, including John Doe. During the times that Plaintiff was entrusted to Defendants and their employees, John Doe was under the supervision and control of Defendants.

62. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants, this relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of the Defendants and their employees, including John Doe. This entrustment of the Plaintiff to the care and supervision Defendants' employees,

and exposure to Defendants' employee John Doe, while Plaintiff was a minor child, required the Defendant to assume a fiduciary relationship and to act in the best interests of the Plaintiff and protect Plaintiff due to infancy and vulnerability.

63. Pursuant to their fiduciary relationship, Defendants was entrusted with the well-being, care, and safety of Plaintiff.

64. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

65. Defendants breached their fiduciary duties to Plaintiff.

66. At all times material hereto, the respective Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

67. As a direct result of the respective Defendants' breach of fiduciary duty, Plaintiff has suffered the injuries and damages described herein.

68. By reason of the foregoing, the respective Defendants are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

**FIFTH CAUSE OF ACTION
BREACH OF NON-DELEGABLE DUTY**

69. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "35" as if fully set forth herein.

70. While Plaintiff was a minor, Plaintiff was entrusted by her parents to the control and supervision of Defendants and their employee, John Doe, for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to learn and grow. There existed a non-delegable duty of trust between Plaintiff and Defendants.

71. Plaintiff was a child, vulnerable and unprotected while asleep, and placed within the care of the Defendants. As a consequence, Defendants were in the best position to prevent John Doe's sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from John Doe's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

72. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants breached its non-delegable duty to Plaintiff.

73. At all material times hereto, John Doe was under the supervision, employ, direction and/or control of Defendants.

74. As a direct result of the respective Defendants' breach of non-delegable duty, Plaintiff has suffered the injuries and damages described herein.

75. By reason of the foregoing, the respective Defendants' are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

WHEREFORE, Plaintiff, demands judgment against the respective Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be provided at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;

E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York
September 24, 2019

Respectfully Submitted,

HACH ROSE SCHIRIPPA & CHEVERIE, LLP

~~MICHAEL ROSE, ESQ.
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212-213-8311~~

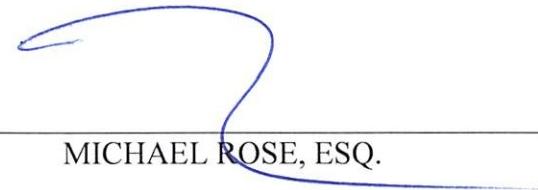
Attorneys for Plaintiff G. S.

ATTORNEY VERIFICATION

MICHAEL ROSE, an attorney duly admitted and licensed to practice law in the courts of the State of New York, hereby affirms, pursuant to CPLR ¶ 2106, states under the penalty of perjury, as follows:

I am a Partner at Hach Rose Schirripa & Cheverie LLP, attorneys for the Plaintiff herein, and as such, fully familiar with all the facts and circumstances heretofore stated herein by reason of a file maintained in our office located at 112 Madison Avenue, 10th floor, New York, New York 10016; I have read the foregoing Complaint, and the same is true to our own knowledge, except as to the matters therein stated to be alleged upon information and belief and, as to those matters, we believe them to be true; and that this verification is being made by us because the Plaintiff does not reside within New York County wherein our office is located.

Dated: September 24, 2019
New York, New York



MICHAEL ROSE, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

G. S.,

Plaintiff(s),

-against-

FROST VALLEY YMCA, FROST VALLEY
ASSOCIATION, INC., and YMCA OF
THE USA,

Defendants.

Defendant(s).

SUMMONS AND COMPLAINT

HACH ROSE SCHIRIPPA & CHEVERIE, LLP

Attorneys for Plaintiff(s)

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